

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JAY H. MARX, et al.	:	CASE NO. C-1-02-050
Plaintiffs,	:	JUDGE WATSON
v.	:	
LT. COLONEL RICHARD JANKE, et al.	:	ANSWER AND AFFIRMATIVE
Defendants.	:	DEFENSES

INTRODUCTION

The plaintiffs and many others marched illegally through the streets of Mt. Adams on June 2, 2001, without a permit, creating the risk and impression that they would destroy property and illegally disrupt the rights of law-abiding citizens. The plaintiffs unlawfully walked in the street and blocked traffic. Police officers moved in front of the plaintiffs in order to stop the illegal conduct and minimize the impact on the Mt. Adams community. Police officers then attempted to disperse the plaintiffs and the rest of their group, but the plaintiffs refused to comply with lawful orders and otherwise resisted arrest. Arrests were made and the illegal conduct then abated. The plaintiffs' allegations are exaggerated or false.

ANSWER

1. Defendants City of Cincinnati, Lt. Colonel Richard Janke, and Police Officer Spencer Henderson are without information sufficient to form a belief as to the truth of the allegation in paragraph 1 of the complaint and therefore deny the allegation.

2. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 2 of the complaint and therefore deny the allegation.

3. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 3 of the complaint and therefore deny the allegation.

4. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 4 of the complaint and therefore deny the allegation.

5. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 5 of the complaint and therefore deny the allegation.

6. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 6 of the complaint and therefore deny the allegation.

7. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 7 of the complaint and therefore deny the allegation.

8. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 8 of the complaint and therefore deny the allegation.

9. The City Defendants deny the allegations contained in paragraph 9 of the complaint.

10. The City Defendants deny the allegations contained in paragraph 10 of the complaint.

11. The City Defendants admit the allegations in paragraph 11 of the complaint that Defendant Lt. Colonel Richard Janke is employed by the City as Assistant Chief of Police.

12. The City Defendants admit the allegations in paragraph 12 of the complaint that Defendant Police Officer Spencer Henderson is a City of Cincinnati Police Officer.

13. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 13 of the complaint and therefore deny the allegation.

14. The City Defendants deny the allegations contained in paragraph 14 of the complaint.

15. The City Defendants deny the allegations contained in paragraph 16 of the complaint.

16. The City Defendants admit the allegations in paragraph 16 of the complaint.

17. The City Defendants deny the allegations contained in paragraph 17 of the complaint.

18. The City Defendants deny the allegations contained in paragraph 18 of the complaint.

19. The City Defendants deny the allegations contained in paragraph 19 of the complaint.

20. The City Defendants deny the allegations contained in paragraph 20 of the complaint.

21. The City Defendants deny the allegations contained in paragraph 21 of the complaint.

22. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 22 of the complaint and therefore deny the allegation.

23. The City Defendants admit the allegations in paragraph 23 of the complaint.

24. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 24 of the complaint and therefore deny the allegation.

25. The City Defendants admit the allegations in paragraph 25 of the complaint.

26. The City Defendants deny the allegations contained in paragraph 26 of the complaint.

27. The City Defendants deny the allegations contained in paragraph 27 of the complaint.

28. The City Defendants deny the allegations contained in paragraph 28 of the complaint.

29. The City Defendants deny the allegations contained in paragraph 29 of the complaint.

30. The City Defendants admit the allegations in paragraph 30 of the complaint.

31. The City Defendants deny the allegations contained in paragraph 31 of the complaint.

32. The City Defendants deny the allegations contained in paragraph 32 of the complaint.

33. The City Defendants deny the allegations contained in paragraph 33 of the complaint.

34. The City Defendants deny the allegations contained in paragraph 34 of the complaint.

35. The City Defendants deny the allegations contained in paragraph 35 of the complaint.

36. The City Defendants admit the allegations in paragraph 36 of the complaint.

37. The City Defendants deny the allegations contained in paragraph 37 of the complaint.

38. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 38 of the complaint and therefore deny the allegation.

39. The City Defendants deny the allegations contained in paragraph 39 of the complaint.

40. The City Defendants deny the allegations contained in paragraph 40 of the complaint.

41. The City Defendants deny the allegations contained in paragraph 41 of the complaint.

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60. The City Defendants deny the allegations contained in paragraph 60 of the complaint.

61. The City Defendants deny the allegations contained in paragraph 61 of the complaint.

62. The City Defendants deny the allegations contained in paragraph 62 of the complaint.

63. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 63 of the complaint and therefore deny the allegation.

64. The City Defendants deny the allegations contained in paragraph 64 of the complaint.

65. The City Defendants deny the allegations contained in paragraph 65 of the complaint.

66. The City Defendants are without information sufficient to form a belief as to the truth of the allegation in paragraph 66 of the complaint and therefore deny the allegation.

67. The City Defendants deny the allegations contained in paragraph 67 of the complaint.

68. The City Defendants deny the allegations contained in paragraph 68 of the complaint.

69. The City Defendants deny the allegations contained in paragraph 16 of the complaint.

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- 102. The City Defendants deny the allegations contained in paragraph 16 of the complaint.
- 103. The City Defendants deny the allegations contained in paragraph 16 of the complaint.
- 104. The City Defendants deny the allegations contained in paragraph 16 of the complaint.
- 105. The City Defendants deny the allegations contained in paragraph 16 of the complaint.
- 106. The City Defendants deny the allegations contained in paragraph 16 of the complaint.

AFFIRMATIVE DEFENSES

- 107. The individual defendants are entitled to qualified immunity from suit.
- 108. The complaint fails to state a claim upon which relief can be granted.
- 109. The plaintiffs assumed the risk of their unlawful conduct.
- 110. The plaintiffs' unlawful conduct constituted contributory negligence.

Respectfully submitted,

JULIA L. McNEIL (0043535)
City Solicitor

s/ Richard Ganulin
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CERTIFICATE OF SERVICE

I hereby certify on November 19, 2004, a true and accurate copy of the foregoing Answers and Affirmative Defenses was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Richard Ganulin

RICHARD GANULIN (0025642-C)
Assistant City Solicitor

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